

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:09-CR-216-FL-8

UNITED STATES OF AMERICA

v.

ZIYAD YAGHI,

Defendant.

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ORDER

This case comes before the court on the motion (D.E. 687) by J. Douglas McCullough for leave to withdraw as counsel for defendant Ziyad Yaghi (“defendant”). The motion will be allowed.

DISCUSSION

The basis for McCullough’s motion to withdraw is that he has been elected to serve as a judge on the North Carolina Court of Appeals and will take office on 17 January 2011. His service as a judge will preclude him from practicing law and thereby continuing as counsel in this case. Although the election occurred on 2 November 2010, there was a recount, which was completed only within the last few days. McCullough’s motion is therefore timely. Prior to the election, McCullough had advised the court of his plans to run for the North Carolina Court of Appeals, on which he had previously served. The court finds that there is ample good cause for McCullough’s motion.

The court further finds that counsel’s withdrawal at this point in the case would not prejudice defendant. The scheduled trial date is more than eight months away, which should provide the new counsel sufficient time to prepare for trial.

To help facilitate the new counsel’s preparation, the court will provide for a transition period up to 14 January 2011, the last business day before McCullough takes office, during which McCullough will be available to assist the new counsel, as the new counsel deems appropriate, in

becoming familiar with the evidence and issues in the case. This transition process will also facilitate the full exploitation of McCullough's substantial work product in this case and thereby help ensure that full value is received for the cost of defendant's representation to date.

CONCLUSION

IT IS THEREFORE ORDERED as follows:

1. McCullough's motion (D.E. 687) to withdraw is ALLOWED on the terms set forth herein.

2. a. The Office of the Federal Public Defender ("OFPD") is DIRECTED to appoint new counsel for defendant as soon as possible, but in no event later than one day after entry of this Order.

b. The new counsel shall file his notice of appearance within one day after receiving notice of his appointment from the OFPD.

3. a. McCullough shall continue as counsel for defendant during a transition period in which he shall assist the new counsel in becoming familiar with the case and in otherwise taking over representation of defendant in this case.

b. McCullough and the new counsel shall develop a transition plan.

c. McCullough and the new counsel shall complete the transition as soon as practicable. The transition period shall end no later than 14 January 2011. Prior to that date, the transition period shall continue as long as the new counsel has not obtained any necessary security clearance notwithstanding the completion of other aspects of the transition.

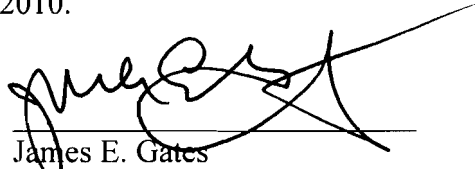
d. During the transition period, the new counsel shall act as lead counsel. The new counsel shall attend, and McCullough may attend as directed by the new counsel, all court proceedings during the transition period requiring attendance by counsel for defendant.

e. If the transition to the new counsel is completed prior to 14 January 2011, thereby ending the transition period, McCullough shall file at such time a notice of withdrawal as counsel for defendant, which shall effect his withdrawal without further order from the court. Otherwise, the transition period shall end on 14 January 2011, and McCullough's withdrawal shall be effective as of that date.

4. In order to further promote the efficient transition to the new counsel, defendant shall attend the next status conference scheduled for 11 January 2011 in Raleigh (*see* D.E. 660).

5. The United States Marshal is DIRECTED to produce defendant for the 11 January 2011 conference.

SO ORDERED, this 20th day of December 2010.



James E. Gates
United States Magistrate Judge